

KENNETH G. BRADY  
d/b/a  
P. O. L. LOGGING

IBLA 73-303

Decided August 29, 1973

Appeal from a decision of the Medford District Office, Bureau of Land Management, which terminated all rights and privileges of the high bidder at a timber sale to enter into a contract, and ordered retention of his bid deposit as liquidated damages.

Affirmed.

Timber Sales and Disposals

Where the high bidder at a timber sale fails to execute the contract, supply a bond, or pay the balance of the first installment within 30 days after his receipt of the contract, and where, during such period, he has not made written request for an extension of the time for compliance, the governing regulation requires that the bid deposit shall be retained as liquidated damages, and the high bidder will lose his right to receive the contract.

APPEARANCES: Kenneth G. Brady, pro se.

OPINION BY MR. STUEBING

Kenneth G. Brady, d/b/a P. O. L. Logging, appeals from the Medford, Oregon, District Office decision dated June 16, 1970, which terminated all his rights and privileges to receive a timber sale contract for which he had made the successful bid. In addition, the decision allowed the Government to retain as liquidated damages \$ 500 which Brady had submitted as a bid deposit.

On April 15, 1970, Brady purchased timber in the Medford District with the contract being transmitted to him for his execution on May 5, 1970. Brady neither executed the contract within the 30 days allowed nor asked for an extension of time, even though a courtesy reminder letter was sent to him on May 28, 1970.

The Medford District Manager sent Brady a letter on June 16, 1970, informing him that all his rights and privileges under the contract were terminated and advising him that the decision would become final within 30 days if no appeal was filed with the Director of the Bureau of Land Management within that time. The District Office received a letter from Brady dated July 14, 1970, stating that he had sent a letter to the Director of the Bureau of Land Management to appeal the District Manager's decision. Brady enclosed a copy of his appeal letter with his letter to the District Manager. After receiving that correspondence the District Office took no more action since Brady had failed to enclose the then required \$ 5 filing fee. On May 24, 1971, the State Director sent a memo to the Medford District Office in which he outlined the problem:

It appears that Mr. Brady followed proper appeal procedures at the time his appeal was made. The Medford District did receive a notice of appeal by letter from Mr. Brady within 30 days from the date of the District Manager's decision. Brady did not submit a \$ 5 filing fee; however, under the changed appeals procedure, this is not required. The Board should have been notified through channels that Mr. Brady was appealing the District Manager's decision dated June 16, 1970. This was not done. It should be noted that Mr. Brady also submitted a Statement of Reasons dated July 14, 1970. Although this Statement of Reasons was sent to the Director in accordance with the requirement by the outdated regulation supplied to Mr. Brady by the BLM rather than to the Board of Land Appeals as was required by the new regulations, it is our understanding that the Board actually received the statement. Therefore, we believe that the appeal by Mr. Brady should be reconsidered and judged on the facts of the case. \* \* \*

On June 9, 1971, the Assistant Director of the Bureau of Land Management in Washington sent a memo to the Board of Land Appeals to determine if the case should be reopened. On September 20, 1972, the Acting Director of the Bureau of Land Management wrote to the Board of Land Appeals requesting review of the Brady case.

In his statement of reasons Brady alleges that he failed to return the requested materials within the required time as he was away from his home when the 30! day period expired because of a family emergency in California. He returned to Glendale, Oregon, his home, on June 19, 1970, and at that time called the Medford District Manager to inquire as to the proper procedure for filing an appeal. He states that he would like to keep the contract in force.

While Brady did not return to Glendale until June 19, 1970, we note that he had 30 days in which to execute and return the contract, secure a performance bond and complete his Operation and Fire Control Plan. Accordingly, although an emergency caused him to be away at the end of the period, he does not indicate when the emergency arose, so we have no means of knowing whether he had ample time to perform before the emergency required his attention. Brady still has not executed the contract or the required forms, nor has he put up the required bond or tendered the balance of his first installment, four! fifths of which would have been covered by his bid deposit.

Concerning Brady's \$ 500 bid deposit which was retained as liquidated damages, 43 CFR 5450.1(b) provides:

Within 30 days after receipt of the contract the successful bidder shall sign and return the contract, together with any required performance bond: Provided, that the authorization officer may, in his discretion, extend such period an additional 30 days if the extension is applied for in writing and granted in writing within the first 30! day period. If a successful bidder fails to comply within the stipulated time, his bid deposit shall be retained as liquidated damages.

Under the circumstances of this case the requirements of the regulation apply.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing  
Member

We concur:

Newton Frishberg  
Chairman

Anne Poindexter Lewis  
Member

